



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: BERMANN, RONNIE J.

SERIAL NO.: 10/075,671

ART UNIT: 1761

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EXAMINER: WEINSTEIN, S.L.

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TITLE: DEVICE FOR DISPENSING SANDWICHES

REMARKS ON AMENDMENT "A"

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action of September 2, 2003, having a response being due on December 2, 2003, please consider the following remarks in conjunction with the amendments to the above-identified application as follows:

REMARKS

Upon entry of the present amendments, previous Claims 1 - 20 have been canceled and new Claims 21 - 34 substituted therefor. Reconsideration of the rejections, in light of the foregoing amendments and present remarks, is respectfully requested. The present amendments have been entered for the purpose of placing the distinguishing the present invention from the prior art.

In the Office Action, it was indicated that Claims 1 - 6 and 18 were rejected under 35 U.S.C. §103(a) as unpatentable over the Young patent, the Mayeaux patent, the Atwood patent, the Legge patent, the Clark patent and the Wilson patent. Claims 7 - 10, 12 - 17, 19 and 20 were rejected as

being obvious under 35 U.S.C. § 103(a) in view of the above-identified references and further in view of the Davis patent, the Nageott patent, the Tregilgas patent and the Kocharian patent. Claim 11 was rejected relative to the earlier references and further in view of the Simmons patent, the Marbe patent, the Cummings patent and the Sharkey patent.

As an overview to the present reply, Applicant has revised original Claims 1 - 20 in the form of new Claims 21 - 34. New independent Claim 21 incorporates the limitations of dependent Claims 2, 3 and 7. In particular, new independent Claim 1 emphasizes the nature of the "guide rod" as "non-centrally" positioned within the body "adjacent" the wall of the tubular body. Independent Claim 21 also emphasizes that the tubular body has a closed end and an open end with the disk member positioned adjacent to the closed end.

New independent Claim 29 incorporates the limitations of previous dependent Claims 13 and 15. Additionally, it was indicated that the guide rod is "non-centrally" positioned within the tubular body "adjacent" the wall of the tubular body. Independent Claim 29 also indicates that the guide rod extends "entirely within the tubular body". New independent Claim 33 incorporates the limitations of dependent Claim 20 along with positively reciting the "sandwich". Independent Claim 33 also claims that the "sandwich is positioned in the tubular body so as to have an end thereof abutting the disk member" and opposite end thereof "extending outwardly of the open end". Applicant respectfully contends that these claims, as amended, serve to distinguish the present invention from the wide variety of prior art references identified by the Examiner.

The structure of the present invention is particularly configured for use in association with the consumption of a sandwich, rather than other food products, such as ice cream. It was stated on pages 10 and 11 of the original specification that:

During consumption, the disk member 32 can be moved forwardly along the fixing means 34 through the manipulation of the arms 24 and 26 extending outwardly of the tubular body 12. As a result, new portions of the sandwich will become exposed at the open end 16. Any dripping contents of the sandwich will be retained within the closed interior of the tubular body 12. If interruptions in consumption should occur, then the spring clip 28 can be secured to an exterior surface. As a result, the tubular body 12 will be retained in a vertical orientation. The user can continue to consume the sandwich until the disk member 32 extends to its end position adjacent to the open end 16 of the tubular body 12. The remaining portion of the sandwich can then be removed from the interior of the tubular body 12 and the tubular body 12 disposed of. Other certain circumstances, the tubular body 12 can be disposed of or can be washed and retained for future use. If the sandwich is only partially consumed, then the disk member 32 can be returned to its position adjacent the closed end 18 so that the sandwich is fully retained interior of the tubular body.

The unique guide rod and disk member relationship, as used in the present invention, achieve these advantages. The configuration of these elements allows the disk member to be properly and easily fixed in a desired position or returned to its previous position. As was stated on pages 8 and 9 of the original specification:

The guide rod 38 has a plurality of fixing elements 40 extending radially inwardly therefrom. These fixing elements are of a ratchet type configuration so as to retain the disk member 32 at a desired position when the disk member 32 is moved to a desired position along the length of the guide rod 38. The guide rod 38 extends for less than the entire length of the tubular body. The guide rod 38 can be formed of a metal or plastic material. The disk member 32 will have a suitable hole formed therein which fits on the guide rod 38. The disk member 32 can be fixed on the guide rod 38 when a slight force is applied by the sandwich onto the surface of the disk member 32. This causes the disk member 32 to lean slightly so as to cause the edges of the hole to exert a force against one of the fixing elements 40 on the guide rod 38.

Applicant respectfully contends that the prior art patents, individually, or in combination, do not show the structure of the present invention, as now claimed by independent Claims 21, 29 and 33.

As an overview to the analysis of the prior art references, Applicant notes that there are an extreme number of references cited by the Examiner. For the most part, these references are directed to the dispensing of ice cream. In all circumstances, the combination of the prior art references in no way shows the use of a guide rod "non-centrally" positioned adjacent to the wall of the tubular body. Additionally, the prior art references do not show the "guide rod" as "extending entirely within the tubular body" (as defined in independent Claim 29). Additionally, none of the prior art references show "a sandwich having one end above the disk member and an opposite end extending outwardly of the open end of the tubular body" (as defined in independent Claim 33).

Relative to the prior art references, Applicant respectfully contends that the Brodesser patent describes an ice cream dispenser having a configuration reminiscent of the present invention. However, the ice cream dispenser of the Brodesser patent does not have the disk member positioned adjacent a "closed end" of the tubular body. In fact, in the Brodesser patent, the closed end 4 is positioned opposite to the disk member 16. Since the Brodesser device is intended for the dispensing of ice cream, it is important that the closed end be suitably sealed so as to preserve the ice cream. The opposite end is not closed so that the user can use a combination of fingers pressing through the open end of the tubular body along with the pressure on the tabs 7 so as to push the ice cream toward the opposite end of the tubular body. Importantly, the Brodesser patent does not show, in any way, the configuration of the "guide rod" or the "fixing means" of the present invention.

The Young patent shows a form of throwaway packaging for food items. Various flaps on the packaging can be opened so as to expose portions of the food items. A pusher member 19

extends outwardly of one end of the packaging so as to urge the food item outwardly of the opposite end. The Young patent does not show the guide rod or the disk of the present invention.

The Mayeaux patent describes a sandwich holder which uses a screw type mechanism on an exterior of the holder so as to facilitate the dispensing of a sandwich from the interior of the holder. The rotation of the holder causes a screw to move a strip 12 upwardly in the holder so as to dispense the sandwich. The Mayeaux patent does not show the disk of the present invention nor the guide rod of the present invention. To the extent that the screw 13 in the Mayeaux patent could be considered a "guide rod", Applicant respectfully contends that it is not "non-centrally" positioned adjacent the wall of the tubular body nor is it located in entirely interior of the tubular body.

The Atwood patent describes a bag having a lifting strip for the dispensing of a food item from the bag. The bag is provided with a lifting strip so that a pulling force applied to the lifting strip will cause the sandwich to be slowly moved outwardly from the bag. The Atwood patent lacks the "disk" of the present invention and also lacks the guide rod disposed entirely interior of the tubular body.

The Legge patent teaches an ice cream receptacle. The Legge patent uses a pull tab or stick in order to push the ice cream outwardly of the packing. Applicant respectfully contends that the Legge patent also lacks the "disk" and the "guide rod" which is disposed "non-centrally" entirely within the tubular body.

The Clark patent teaches another type of ice cream dispenser. In the Clark patent, there is a cone guard which comprises a wall sliding upwardly so as to keep a portion of the ice cream at the top of the cone from dripping on the non-licked side. The Clark patent lacks the "disk" and the "guide rod non-centrally positioned" and "entirely within the interior of the tubular body".

The Wilson patent teaches a chewing gum dispenser having a sliding mechanism along a wall thereof. Although the Wilson patent does describe the body as having a closed end and a U-shaped chamber positioned within the closed end of the body, Applicant respectfully contends that the Wilson patent does not teach the use of a "guide rod", nor the use of a "disk". In the Wilson patent, the slidable chamber is provided so as to move a pack of chewing gum outwardly of the container. It is unlikely that the Wilson patent can be adapted, in any way, for the dispensing of sandwiches.

Applicant notes that the Davis, the Nageotte patent, the Tregilgas patent and the Kocharian patents were cited for the purpose of disclosing the "guide rod" of the present invention. Applicant respectfully contends that this collection of prior art patents is from fields of art very far removed from that of "food dispensing". Fundamentally, Applicant would respectfully contend that one having ordinary skill in the art of the early recited prior art patents would be unlikely to turn to the teachings of this variety of other types of dispenses in order to create a solution for the dispensing of sandwiches. Even if one having ordinary skill in the art would turn to the Davis, the Nageotte, the Tregilgas and the Kocharian patents, these prior art patents, in combination with the early collection of prior art patents, would not disclose the present invention as now claimed.

The Davis patent describes a lipstick holder. The "guide rod 31" in the Davis patent is actuated by the rotation of the body of the lipstick holder. Because of the configuration of the device of the Davis patent, the "guide rod 31" is and must be positioned centrally of the tubular body. The combination of the Davis patent with the prior collection of patents would still lack the "disk" and the "guide rod" as "non-centrally" positioned within the interior of the tubular body.

The prior art Nageotte patent teaches a container for the dispensing of dental, shaving and face creams. The Nageotte patent does appear to show a "guide rod 6" extending through the

interior body. However, the "guide rod 6" of the Nageotte patent is centrally positioned within the tubular body. There is no disk in the Nageotte patent which is movable along the guide rod. Ultimately, it appears that the guide rod 6 in the Nageotte patent actually extends partially outwardly of the tubular body.

The Tregilgas patent discloses a pocket-type automatic tablet dispenser which operates in the nature of an ink pen. When the cap of the ink pen is pushed downwardly, a tablet is dispensed. The "guide rod 16" of the Tregilgas patent is "centrally" located within the tubular body. There is no disk positioned on the tubular body. As such, the combination of the Tregilgas patent with the prior collection of patents would not show the combination of the present invention nor would it serve for the purpose of dispensing sandwiches.

The Kocharian patent describes a popsicle mounted on a stick. There is a "guide rod" which attaches to the popsicle. However, this guide rod extends outwardly of the "tubular body". Furthermore, this "guide rod" is not "non-centrally" positioned. There is nothing in the teachings of the Kocharian patent to suggest its combination with a disk for the purpose of placement and fixing of a sandwich extending outwardly of the tubular body. On this basis, Applicant respectfully contends that the Kocharian patent, in combination with the prior collection of patents, would not teach the present invention.

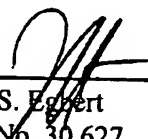
The various dependent claims have been renumbered in the present amendments. In particular, new dependent Claims 22 - 24 correspond to original dependent Claims 4 - 6. New dependent Claims 25 - 28 correspond to original dependent Claims 8 - 11. New dependent Claim 30 correspond to original dependent Claim 14. New dependent Claims 31 and 32 correspond to original dependent Claims 16 and 17. New dependent Claim 34 corresponds to original dependent Claim 19.

Based upon the foregoing analysis, Applicant contends that independent Claims 21, 29 and 33 are now in proper condition for allowance. Additionally, those claims which are dependent upon these independent claims should also be in condition for allowance. Reconsideration of the rejections is requested and allowance of the claims at an early date is earnestly solicited. Since no additional claims have been added above those originally paid for, no additional fee is required.

Respectfully submitted,

Date

11-13-03



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